v. *Warren Bridge,* 11 Pet. 420, 544, 547, 548; *Turnpike Co.* v. *Illinois,* 96 U. S. 63, 68; *Oregon Railway Co.* v. *Oregonian Ry. Co.,* 130 U. S. 1, 26; *Coosaw Mining Co.* v. *South Carolina,* 144 U. S. 550, 562, citing cases. But the statute of the state provided that penal statutes are not to be strictly construed but "according to the fair import of their terms." Moreover the "construction of the statute is authoritative to the extent of the precise question decided and no farther." *L. & N. R. Co.* v. *Gaines,* (C. C.) 3 Fed. 266; *State* v. *Knowles,* 90 Md. 654, 45 Atl. 878, 49 L. R. A. 695; *Southern Ry. Co.* v. *Simpson,* 131 Fed. 705, 709, 65 C. C. A. 563; *Cohens* v. *Virginia,* 6 Wheat. 264, 5 L. Ed. 257; *L. & N. R. R. Co.* v. *County,* 1 Sneed, 639, 696, 62 Am. Dec. 424.

COVENANTS—BREACH OF THAT AGAINST INCUMBRANCES.—The defendant conveyed to the plaintiff land, bounded upon a certain street, but in such terms as to preclude the passage of the fee to any part of the street. The deed of conveyance contained several covenants for title, including a covenant against incumbrances. Six months prior to the conveyance to the plaintiff the defendant had, for a valuable consideration, executed and delivered a contract to the B. & A. Railway Co., by a provision of which the railway company was released from all damages to said lots, by reason of the laying of tracks and the operation of a railroad in the street. In an action by the plaintiff to recover damages for breach of covenant, *Held,* this release is an incumbrance. *Tuskegee Land & Security Co.* v. *Birmingham Realty Co.* (1909), — Ala. —, 49 South. 378.

The facts in this case are rather unusual and although the court cites no case exactely in point it relies, among others, upon *Taylor* v. *Evans,* 177 Pa. 286, 35 Atl. 635, 69 L. R. A. 790, in which the facts were somewhat similar. In that case the right of a city to open a street without paying damages for buildings erected in the bed thereof, after the street was laid and platted, was held to be an incumbrance. The release given to the railway company would seem to come within the definition of an incumbrance as laid down in *Prescott* v. *Trueman,* 4 Mass. 627, 3 Am. Dec. 246, and adopted by the court in deciding the principal case, where an incumbrance is defined as "any right or interest in the land granted to the diminution of the value of the land, but consistent with the passing of the fee by conveyance," since the operation of a steam road in front of the property might clearly detract from the value of the land and, by the release, the plaintiff would be precluded from recovering damages from the railroad company.

ELECTIONS—BALLOTS—INDICATION OF CHOICE BY VOTER.—Plaintiff and defendant were candidates on the Democratic ticket for the office of constable. Two ballots cast at the election were marked in the party device at the head of the ticket and also opposite the name of each and every candidate on the ticket excepting the name of plaintiff. Sec. 4, art. 1, c. 17, page 234, Session Laws 1905 provides that if a voter shall desire to vote for all the candidates of one political party * * * he may stamp a cross in the circle under the device and in the column above the candidates of the party * * * for whom he desires to vote, and such ballot when so marked shall be counted as a

straight ticket for all the candidates in the column under said circle. And § 9, art. 1, c. 17, page 240, L. 1905, provides, under instructions of how to vote, that: "To vote a straight ticket, stamp in the circle beneath the device. To vote a mixed ticket, stamp in the square to the left of the name of each candidate you desire to vote for." In quo warranto proceedings it is *Held,* (two justices dissenting) that the ballots in question must be counted as "a straight ticket" for all candidates in the column on that ticket and that the extra marks or crosses opposite the names of the candidate on that ticket are without effect. *Potts* v. *Folsom* (1909), — Okla. —, 104 Pac. 353.

Statutes regulating the manner in which voters shall indicate their choice are held to be mandatory, yet the general principle of construction is that "a voter should not be disfranchised if it is clear that he has made an honest effort to comply with the requisites of the statute, although he has been more or less unsuccessful." 15 CYC. 353; *Young* v. *Simpson,* 21 Colo., 460; *State ex rel. Waggoner* v. *Russell et al,* 34 Neb. 116, 51 N. W. 465; *Flanders* v. *Roberts,* 182 Mass. 524. In MCCRARY, ELECTIONS, § 243, the same idea is set forth as follows: "Statutes regulating elections are to be construed, if possible, so as to give effect to the will of the electors as expressed by their ballots." It is to be observed that under the statutes cited, it is just as plausible and more desirable to consider that the marks opposite the names of the various candidates expressed the intention of the voters and that the mark in the device at the head of the ticket is mere surplusage and of no effect. Moreover it suggests itself to the writer that the actual intention of the voter would more likely be expressed by the many marks than by the single one; for, otherwise, the effect of the decision in the case under discussion is that the elector wastes his vote for constable.

EVIDENCE—FACTS JUDICIALLY NOTICED MAY BE REBUTTED.—The plaintiff's husband came to his death while working in the defendant's coal mine. The plaintiff bases her action on § 8802 of the Rev. St., 1899, which provides for the inspection of "all mines generating gas," and claims that the deceased met his death, as a result of the defendant's breach of duty, as imposed by this law. The lower court rejected evidence offered by the defendant, to establish the fact that the mine in which deceased worked was not a "mine generating gas"; on the ground that it took judicial notice of the fact that all coal mines generated gas. *Held,* that the rejection of this evidence was error, for facts judicially noticed may be rebutted. *Timson* v. *Manufacturers' Coal & Coke Co.* (1909), — Mo. —, 119 S. W. 565.

The court, by a vote of three to two, expressly overrules *Poor* v. *Watson,* 92 Mo. App. 89, in which it was decided that courts will take judicial notice of the fact that all coal mines generate gas. The majority opinion not only says that such a fact is not a proper one to be judicially noticed, but further says that even if it were, it was error in the lower court, not to admit evidence, offered by the defendant to rebut it. That a fact judicially noticed may be rebutted, see 4 WIGMORE, EVID., § 2567; also *People* v. *Mayes,* 113 Cal. 618. The dissenting opinion, rendered by VALLIANT, C.J., is to the effect that, whether or not all coal mines are gas generating, is a proper matter for